

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003  
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002  
(Filed April 7 1993)  
  
(Permanent Line Sharing  
Phase)

**ASSIGNED COMMISSIONERS RULING DENYING  
VERIZON CALIFORNIA INC.'S APPEAL OF  
ASSIGNED ADMINISTRATIVE LAW JUDGE RULING**

**Summary**

In this ruling, I deny Verizon California Inc.'s (Verizon's) appeal, made pursuant to Rule 65 of the Commission's Rules of Practice and Procedure, of the assigned Administrative Law Judge's (ALJ) ruling of April 8, 2002. ALJ Jones' ruling denied Verizon's motion to quash subpoenas *duces tecum*.

**Background**

In its March 27, 2002 motion to quash, Verizon indicates that it has worked diligently and in good faith to comply with ALJ Jones' February 15, 2002 ruling regarding discovery in this proceeding. However, Verizon asserts that Covad Communications Company's (Covad's) new discovery subpoenas served on Verizon on March 22, 2002 go beyond what the ALJ has ordered and seek discovery on Verizon's highly proprietary financial, technical, and business

analysis underlying the decisions it has made regarding its PARTS or Packet At The Remote Terminal Service.

Verizon indicates that Verizon's internal business decisions on this deployment are not relevant to determining what Verizon's wholesale obligations might be, are not reasonably calculated to lead to the discovery of relevant evidence on what those obligations may be, and are not legitimate areas of continued discovery by Covad. According to Verizon, the subject matters Covad is requesting are the highly proprietary internal decision-making process and product and business analysis for PARTS, including financial assumptions and inputs, related to that decision-making process. Verizon argues that these subjects are totally unrelated to the question of what Verizon's wholesale obligations might be when and if PARTS is offered in California and that Covad does not have the right to explore or use for its own purposes a competitor's extensive business and technical analysis and financial assumptions—materials that are highly proprietary to Verizon. Moreover, Verizon asserts that, under the Telecommunications Act of 1996, Covad does not have the right to alter or modify the decision that Verizon has made regarding PARTS deployment.

In its motion, Verizon indicates that (i) there will be limited PARTS deployment in 2002 at approximately 15 remote terminals in the former Bell Atlantic territory, (ii) there will be no PARTS deployment in 2002 in the former GTE territory, including California, and (iii) there have been no decisions made regarding deployment after 2002.

On March 29, 2002, Verizon filed a second motion to quash subpoena *duces tecum* seeking e-mail communications in possession of eight Verizon employees. Verizon indicates that the collection process will require an enormous effort,

which is totally unnecessary in light of the documents already produced and depositions conducted by Covad.

Verizon indicates that Covad has already conducted discovery on these issues, including how the limited deployment will be implemented. Verizon states that any additional discovery would simply be cumulative.

Covad filed in opposition to Verizon's motion to quash on April 4, 2002. Covad argues that Verizon's motions fail to provide any legally sufficient reason to block further discovery. Covad states it is trying to determine Verizon's true plans for deployment of Digital Subscriber Loop (DSL) at the remote terminal, or PART service, and the underlying network components.

Covad defends the relevance of its claim that the issues on which it seeks depositions and e-mail communications are relevant. Covad asserts that the issues on which Covad is seeking depositions and e-mails are explicitly identified on the list of issues for which ALJ Jones has already compelled depositions; the list is included as Attachment A to this ruling. According to Covad, Verizon admits in its motions that it has not yet produced all persons most knowledgeable on the topics on that list. Further, Verizon has already produced documents on the topics designated for deposition in Covad's subpoenas without raising any objection as to relevance. Thus, Covad asserts that Verizon has already waived any relevance objection for the topics Covad designated for deposition.

Finally, Covad argues that Verizon itself has put its business plans at issue in this proceeding by submitting testimony not once, but twice, that denies Verizon has any plans at all in California for DSL at the Remote Terminal or PART service. In reality, states Covad, it has been able to determine through depositions already conducted that Verizon has temporarily delayed the rollout

of PART service in California, but continues to deploy remote terminals equipped with components needed to support DSL at the remote terminal.

Covad indicates that Verizon only states that it has no plans to offer PART service in California in 2002. However, it does not state whether it intends to offer PART service in California in 2003. According to Covad, the issue of whether Verizon will deploy PARTS in California in 2003 is directly at issue in this proceeding.

Covad states that the standard for discovery in California is broad—a party may obtain discovery regarding any matter relevant to the subject matter or issues in the action.<sup>1</sup> Relevance to the subject matter of the action is not the same as admissibility; rather, the test is whether the information sought is reasonably calculated to lead to the discovery of other evidence that would be admissible. Thus, Covad asserts that the default rule is to allow discovery, and the burden is on the party seeking to block discovery to demonstrate why discovery should not be allowed. This is especially true where, as here, the topics at issue have already been judged relevant by the ALJ, and Verizon has previously produced documents on those topics without raising a relevance objection.

Covad states that contrary to Verizon's assertions, Covad's request for e-mails is not overly burdensome or duplicative of previous discovery. It is clear from depositions already taken in this proceeding that e-mail is a primary means of communication at Verizon. Further, Covad asserts that it has established that all eight persons noted have intimate knowledge and e-mail documentation of

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<sup>1</sup> Cal. Code of Civ. Pro, Discovery Act, § 2017(a).

issues that are central to this proceeding. To date, Covad has received a negligible number of e-mails sent or received by those persons.

During the March deposition, Covad learned that it is a widespread practice at Verizon to delete e-mail messages in individuals' inboxes after 60 days, at which time e-mails not placed into separate folders are archived on a centralized computer system.<sup>2</sup> The documents pertinent to this case have to be a subset of the e-mails already organized and archived in folders of electronic media of the eight individuals. Thus, Covad asserts it would not be a difficult or burdensome task to gather the e-mails it has requested.

Covad states that the information sought in e-mail communications is demonstrably relevant to this proceeding. As with the depositions sought by Covad, all of the topics for which Covad seeks e-mail communications are included on the list of topics which was attached to Covad's first set of deposition subpoenas issued on February 4 and February 7, 2002. Despite Verizon's efforts to quash those subpoenas, ALJ Jones upheld the subpoenas thereby compelling discovery on all of the issues on the list of topics.

In a Conference Call on April 8, 2002, with Verizon and Covad, and other interested parties to the proceeding, ALJ Jones denied Verizon's March 27 and March 29, 2002 motions to quash. In doing so, ALJ Jones expressed concern that production of the e-mails could prove to be burdensome. Counsel for Covad indicated that they would work with Verizon to see that they were not. ALJ Jones then stated that Verizon's counsel should contact her if producing the e-mails did prove to be more burdensome than Covad indicated. At the end of

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<sup>2</sup> Affidavit of Anita Taff-Rice In Support of Subpoena *Duces Tecum* for Email Communications and Documents of Named Verizon Personnel, at 9, 10.

the conference call, counsel for Verizon asked ALJ Jones if she would stay her ruling so that Verizon could appeal her ruling to the assigned commissioner. ALJ Jones agreed to do so.

Verizon filed its appeal to the ALJ's ruling denying Verizon's motions to quash, on April 26, 2002. In its appeal, Verizon reiterated many of the same arguments as in its motions to quash. In addition, Verizon indicates that it does not object to continued discovery on subjects identified in Topics II and III of Attachment A. Verizon acknowledges these subjects bear a relation to Verizon's potential wholesale obligations that are in issue in the permanent line sharing docket. However, Verizon does object to continued discovery on the subjects identified in Topics I and IV, with one narrow exception,<sup>3</sup> because they relate to Verizon's highly proprietary business planning process and do not have an impact on Verizon's potential wholesale obligations. Topic I is titled "Business Planning, Information and Documents," while Topic IV is titled "Marketing and Product Development."

Verizon states that it has already provided vast discovery in this proceeding. Verizon contends that Covad apparently wants to second-guess Verizon's decisions and motives via access to Verizon's highly sensitive market and financial projections and presentations from recent strategy sessions which discussed whether and when to roll out the new product. Verizon sees the discovery Covad seeks as impermissibly broad and harassing. According to Verizon, Covad cannot demonstrate the relevance of the discovery it seeks.

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<sup>3</sup> Verizon indicates that it does not object to continued discovery on Verizon Advanced Data Inc. (VADI) issues, which is listed under Topic I on the list in Attachment A.

## **Discussion**

Verizon made its appeal pursuant to Rule 65, which allows evidentiary rulings to be referred to the Commission for determination. The complete text of Rule 65 reads as follows:

The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Commission is necessary to promote substantial justice, the presiding officer may refer the matter to the Commission for determination.

For two reasons it appears that Rule 65 is not relevant to the instant case. For one thing, in this case we are dealing with a discovery dispute, and not on the admissibility of evidence. Although the discovery process could lead to evidence that may or may not prove to be admissible, Rule 65 does not provide a remedy for appealing ALJ rulings in discovery disputes. Also, Rule 65 provides that the presiding officer, in this case the assigned ALJ, can refer issues regarding admissibility of evidence to the Commission. However, it does not include a provision that allows an aggrieved party to appeal a ruling of the presiding officer.

Regardless of that fact, I will address the merits of Verizon's appeal, and dispose of this issue so that the PLS proceeding can move forward. In its appeal, Verizon asks me to refer the issue to the full Commission for consideration. I am not willing to do that. The Commission's time is best spent deciding substantive issues relating to the industries we regulate. Adjudicating procedural disputes is not an effective use of the Commission's time. Also, the requirements of Pub. Util. Code § 311(g), which allows time for review and comment on draft Commission decisions, would further delay the discovery process for this

proceeding. I am the assigned commissioner to the Permanent Line Sharing Proceeding, and in that role I will rule on Verizon's appeal.

Verizon raises concerns that the information on its business planning process that Covad is requesting is highly confidential. However, there is a nondisclosure agreement in place in this proceeding, and highly confidential information has been presented in previous phases, under the protection of the nondisclosure agreement. Sometimes sensitive information is key to the decision-making process, and we have adequate protections in place to see that it is treated properly. In addition, as Covad states, Verizon did not object to Topics I and IV, when they were first produced attached to subpoenas in February 2002. That would have been the appropriate time for Verizon to argue that those topics are not relevant.

Covad's arguments have convinced me that the information it is seeking is potentially relevant to this proceeding. Since it is unlikely that we will have a decision in this phase before 2003, it is relevant to know Verizon's deployment plans beyond 2002. Verizon's view of relevance is much too narrow. Therefore, I deny Verizon's appeal to overturn ALJ Jones' ruling, and order that discovery proceed in an expeditious manner.

**IT IS SO RULED.**

Dated May 9, 2002, at San Francisco, California.

/s/ Carl Wood  
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Carl Wood  
Assigned Commissioner



## **ATTACHMENT A**

### **Scope of Likely Deposition Topics for Verizon**

Per your request, the following is a general list of the areas that we intend to cover at the upcoming depositions. As we have already agreed, we are providing this list to assist you in determining the proper deponents and preparing them for deposition. This list is not meant to be an exhaustive list of every area on which we will be questioning Verizon deponents, nor will it in any way limit areas of questioning during the deposition. The title for each category below is not meant to have any independent significance. Instead, the titles are merely a convenience for organizing the areas of inquiry. Please call us after you have had a chance to examine the list so we can be sure you understand the type of information we are seeking. We intend the depositions to have multiple purposes, including obtaining information from subject matter experts and identifying documents and other materials for further production by Verizon.

#### **I. Business Planning, Information and Documents**

- DSL at the remote terminal (“RT”) business plan
- Fiber-fed NGDLC business plan
- PARTS business plan
- Overall Verizon budget and planning process
- Differences between Verizon West/CA and Verizon East capital budget and planning process
- NGDLC/OCD/ATM/fiber-fed loop plant/OSS budget and planning process
- Actual and projected plans and budgets/financial analysis for DSL at the RT/fiber-fed NGDLC/PARTS for 2000, 2001, 2002, 2003, 2004, 2005
- Scope and timing of VADI reintegration; post integration issues (unbundling, splitter ownership, OSS, packet switching, collocation, etc.)
- Type and frequency of disclosure of business plans and business directions to investors and analysts (*e.g.*, Verizon analog to SBC’s Investor Briefings)
- Consultation/coordination/planning with SBC and BellSouth on network architecture, network planning, regulatory policy or other issues for DSL at the RT/fiber-fed NGDLC/PARTS
- Workgroups involved in business planning and related processes (name, acronym, description of job function, etc.)

## II. Network Planning, Deployment, and Capabilities

- Differences (if any) between network planning, deployment and capabilities for Verizon CA, Verizon West and Verizon East
- Long range outside plant planning process
- Process for new technology testing, approval for use, and deployment
- Existing network architecture
- Planned network architecture for DSL at the RT/fiber-fed NGDLC/PARTS
- Outside Plant (“OSP”) and Central Office (“CO”) planning process
- Technology selection process (*e.g.*, formal/informal, RFPs, vendor contracts, etc.)
- NGDLC vendor(s)
- ATM switch/OCD vendor(s)
- COT vendor(s)
- Methods and Procedures (“M&P”) for CO equipment (DSLAMs, ATM switch/OCDs, COTs, etc.)
- M&Ps for loop plant and equipment (NGDLC, RT enclosures, fiber and copper loops and loop segments, etc.)
- Vendor guides and other documentation for DSLAMs, OCDs, COTs, NGDLC, RTs, and supporting equipment
- Current and planned software versions for DSLAMs, OCDs, COTs, NGDLC, and supporting equipment
- Deployment schedules for California and nationally for DSL at the RT/fiber-fed NGDLC/PARTS
- Element managers for OCDs and NGDLCs
- Connection of copper loop facilities to RT based NGDLC (hard wired, cross connect field, SBC-like Engineering Controlled Splice, etc.)
- ATM QoS classes currently supported and planned for future support at OCD and RT-based NGDLC equipment
- Standard practices and policies for advanced provisioning/release of line cards and other units of capacity in CO and RT-based equipment
- Collocation inside and next to RT
- Loop fiber new builds and overbuilds (*e.g.*, number of fibers per feeder route, separate ATM and TDM fibers, etc.)
- New versus upgraded DLCs
- Existing base of DLCs and RTs
- Workgroups involved in network planning and deployment and related processes (name, acronym, description of job function, etc.)

### III. OSS, including what SBC calls back office systems

- Differences and similarities between OSS for Verizon CA, Verizon West and Verizon East
- Integration plans for Verizon footprint-wide OSS
- Verizon CA/Verizon West mapping of analogs to the Telcordia and other OSS used by Verizon East
- Current OSS capabilities of Verizon West and Verizon East
- Vendor and/or Verizon user manuals or guides for OSS, including definitions of terms and acronyms
- OSS upgrade path for Verizon West and Verizon East
- Current and planned Verizon West and Verizon East OSS that will support DSL at the RT/fiber-fed NGDLC/PARTS
- Decision process for OSS path forward
- Degree of mechanization and flow-through, both currently and after deployment of DSL at the RT/fiber-fed NGDLC/PARTS
- Access to OSS by current Verizon/VADI employees (terminal emulation, access to which systems by which workgroups, etc.)
- OSS changes to support line sharing on DSL at the RT/fiber-fed NGDLC/PARTS
- OSS changes to support line splitting on DSL at the RT/fiber-fed NGDLC/PARTS
- UNE-P/line splitting single order process on DSL at the RT/fiber-fed NGDLC/PARTS
- Workgroups involved in OSS and related processes (name, acronym, description of job function, etc.)

### IV. Marketing and Product Development

- Centralized versus regional UNE and wholesale product/service planning and decision making (Verizon CA versus Verizon West versus Verizon East)
- Details of UNE development process (CLEC input, core teams, marketing service descriptions, etc.)
- Wholesale service development process (CLEC input, core teams, marketing service descriptions, etc.)
- History and status of PARTS
- History and status of UNEs on DSL at the RT
- History and status of UNEs on fiber-fed NGDLC

- Product development's role in deciding on degree and type of unbundling for DSL at the RT/fiber-fed NGDLC/PARTS
- How do UNE product development workgroups analyze and process CLEC requests for subloop unbundling, line card collocation, additional ATM QoS classes, etc.
- Workgroups involved in marketing and product development and related processes (name, acronym, description of job function, etc.)

**(END OF ATTACHMENT A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Denying Verizon California Inc.'s Appeal Of Assigned Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated May 9, 2002, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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